IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.310 OF 2001.

Rajat Jaiprakash Rastogi. ... Applicant.
Versus.
M/s.JMJ Estates & another. ... Respondents.

CRIMINAL REVISION APPLICATION NO. 311 OF 2001.

Mrs.Gursimran M.Deol. ... Applicant.
Versus.
M/s.JMJ Estates & another. ... Respondents.

ALONG WITH

CRIMINAL REVISION APPLICATION NO.312 OF 2001.

Lt.Col. B.T.Jade. ... Applicant.
Versus.
M/s.JMJ Estates and another. ... Respondents.

Shri S.A.Sawant for the Applicants in all C.R.As.

None for the Respondent No.1.

Shri U.V.Nikam, A.P.P. for the State.

CORAM : ABHAY S. OKA, J.

DATED : 19th July, 2005.

JUDGMENT:

1. In Criminal Revision Application No.310 of 2001, rule was issued on 24th February 2003. In Criminal Revision Application No.312 of 2001, Rule was issued on 8th January 2003 and in Criminal Revision Application No.311 of 2001, Rule was issued on 24th February 2003. When these three Revision Applications appeared on board on 12th July 2005, the learned Advocate appearing for the Respondent No.1 in all three Revision Applications

was not present. Therefore, by order dated 12th July 2005, the parties were put to notice that the Revision Applications will be decided finally on the next date. The learned Advocate appearing for the Applicant was directed to serve notice to that effect on the Advocate for the Respondent No.1. Shri Sawant appearing for the Applicants in all the three Revision Applications stated that the notice has been served on the Advocate appearing for the Respondent No.1. In the morning session when these Revision Applications were called out, the learned Counsel for the Respondent No.1 was not present and therefore, the Revision Applications were kept back. When the Revision Applications were again called out, none appeared for the Respondent No.1. Hence I have heard Shri Sawant appearing for the Applicants.

2. Since the facts of all the three Revision Applications are identical, reference is made to the facts of the case in the Revision Application No.310 of 2001. The Applicant is the original Complainant in a Complaint under section 138 of the Negotiable Instruments Act, 1881. On 23rd March 2000, the learned Judicial Magistrate First Class issued the process. An application was filed by the Respondent No.1-accused praying for recalling the order issuing process. By the impugned order dated 21st June 2001 which is the common impugned order in all the three Revision Applications,

the learned Judicial Magistrate First Class recalled the process issued against the Respondent No.1 and the Respondent No.1 was ordered to be discharged.

3. Shri Sawant the learned Counsel appearing for the Applicant has relied upon decision of the Apex Court in the case reported in 2004 (4) Mah.L.J. page 274 (Adalat Prasad v/s. Rooplal Jindal & others) and a decision of the learned Single Judge of this Court reported in 1999(2) Bombay Criminal Cases, page 186 (Kantilal Hargovinddas Shah v/s.Trishula Industries and others).

4. I have considered the submissions. By order impugned, the order passed by the Judicial Magistrate First Class issuing process on the complaint filed by the Applicant has been recalled. In the case of Adalat Prasad (supra), the law laid down by the Apex Court is very clear. The Apex Court has held that it is impermissible for the accused on receipt of summons to approach the Court and make an application for dismissal of the Complaint under section 203 of the Code of Criminal Procedure, 1973 for reconsideration of material available on record and for recalling of the order issuing process. The Apex Court held that the learned Magistrate has no jurisdiction to recall the order issuing process. In paragraphs 16 and 17 of the decision, the Apex Court held thus:

"16. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of sections 200 and 202, the order of the magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal Courts, the remedy lies in invoking section 482 of the Code.

17. Therefore, in our opinion the observation of this Court in the case of Mathew (supra) that for recalling an order of issuance of process erroneously, no specific provision of law is required would run counter to the Scheme of the Code which has not provided for review and prohibits interference at interlocutory stages. Therefore, we are of the opinion, that the view of this Court in Mathew's case (supra) that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct

law."

5. In view of this position, the impugned Judgment orders are liable to be quashed and set aside as the learned Magistrate could not have recalled the order issuing process. Accordingly the following order is passed:

(i) Criminal Revision Applications are allowed.

(ii) The impugned Judgments and Orders dated 21st June 2001 are quashed and set aside. The earlier orders passed by the Judicial Magistrate First Class issuing process in the criminal complaints filed by the Applicants are restored.

(iii) All contentions of the parties on merits of the complaints are kept open.

(iv) Parties to act on an authenticated copy of the order.

Judge.